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3714
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Knust *et al.*
Serial No.: 09/483,854
Filed: January 17, 2000
For: Automated Wagering Recognition
System

§ Examiner: Ashburn, S.
§
§ Group Art Unit: 3714
§
§ Atty Dkt No.: GENE.3

Mail Stop - **APPEAL**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner of Patents and Trademarks, Washington, D.C. 20231. Tim Cook

10 May 04 Tim Cook
Date: Signature

APPEAL BRIEF

(1) *Real party in interest.*

Genesis Gaming Solutions, Inc.

(2) *Related appeals and interferences.*

None.

(3) *Status of claims.*

Claims 1, 4-9, and 17-20 are pending, claims 2, 3, and 10-16 have been cancelled, and all pending claims are appealed.

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(4) Status of amendments.

All amendments have been entered.

(5) Summary of invention.

The present invention comprises a computer implemented gambling tracking system 10, used primarily to keep track of gambling by valued customers for special rewards (page 2 of the application as filed). The system includes a central computer 12 and a video multiplexer 18 coupled to the central computer. A gaming table 16 is associated with the video multiplexer and the gaming table includes a plurality of video imagers 44 which are coupled to the video multiplexer. Each of the plurality of video imagers is directed to a predetermined wagering location 46 on the table. The system further includes a chip recognition system (page 9, line 25 to page 13, line 6) in the central computer to determine the value of the wagers in each of the wagering locations. The recognition system includes an algorithm which takes into account multiple image component planes selected from the group consisting of hue, saturation, and lightness (HSL); particle analysis correlation; and a combination of them. The system also includes a platform 40 on the table above and adjacent to the predetermined wagering locations wherein each of the plurality of video imagers is located below the platform. The system also includes an arcuate wall 52 extending between the platform and the table with apertures through the wall and the video imagers positioned behind the wall and directed through the apertures. Finally, the system includes a light 50 below the platform and directed to each of the wagering locations, the light providing illumination projecting from the arcuate wall from below the platform laterally toward a predetermined gaming location.

(6) *Issues.*

- (a) Would claims [1, 4, 5, 8, 9, and 17-20] have been obvious to one skilled in the art at the time the present invention was made under 35 U.S.C. § 103(a) over Schubert (U.S. Patent 6,313,871) in view of Walsh (U.S. Patent 5,726,706); Helms *et al.* (U.S. Patent 6,344,874); and Fishbine *et al.* (U.S. Patent 5,781,647).
- (b) Would claims [6 and 7] have been obvious to one skilled in the art at the time the present invention was made under 35 U.S.C. § 103(a) over Schubert in view of Walsh; Helms *et al.*; and Fishbine *et al.* as applied to claim 1 and further in view of Mothwurf (U.S. Patent 5,919,090).

(7) *Grouping of claims.*

All claims stand or fall together.

(8) *Argument.*

Claim 1

Taking the Examiner's position regarding independent claim 1 in the Office Action of December 17, 2003, the claimed invention is a gambling tracking system comprising three systems usable together in combination: (i) a system directed to multiplexing cameras for monitoring gaming tables; (ii) a structure directed to a gaming table containing cameras; and (iii) a system directed to gaming chip recognition.

For purposes of this appeal, the Applicants conceded that Schubert, the primary reference cited by the Examiner, teaches a system for multiplexing cameras for monitoring a gaming table, as claimed in the present application. The Applicants reserve the right to later claim a system for multiplexing a plurality of images from multiple gaming tables, with multiplexers coupled together in series, as shown and described in

the present application. However, the Applicants traverse the position of the Examiner in respect of features (ii) and (iii), those of the structure of the gaming table and the chip recognition system of this invention.

Structure of the Gaming Table

On page 3 of the Office Action of December 17, 2003, the Examiner took the position that

“Schubert discloses the following features: a. A platform on the table above the predetermined wagering locations where each of the video imagers is located below the platform. *See fig. 1; col. 4:15-47*. More specifically, Schubert describes mounting the video imagers within a raised rail or ridge on the perimeter of the table. *See id.* Implicitly, this raised rail includes an upper surface constituting a platform wherein the internal imagers are below the platform and above the wagering locations.”

This position of the Examiner reads teachings into the Schubert reference which are simply not there. On the one hand, the Examiner takes the position that the “platform” of Schubert is the structure above the video imagers of Schubert, *i.e.* the chip tray 20. If this is so, then there is no way to stretch the teachings of Schubert to include a platform above the video imagers of the present invention, except to call it “implicit”. The Applicants candidly admit that in Column 4, starting at line 25, Schubert suggests “Additionally, video cameras can be installed within a raised rail or ridge that may be disposed around the perimeter.” However, there is no structure shown or suggested in Schubert just how this is to be done.

Further, the Examiner took the position that Schubert teaches:

“An arcuate wall extending between the platform and the table wherein the video imagers are positioned behind the arcuate wall. More specifically, *Schubert* describes a gaming table having a typical “arcuate” shape wherein video cameras are installed within a raised rail or ridge that may be disposed around the perimeter of the table. *See fig. 1; col. 4:25-27*. Notably, *Schubert* also describes placing imagers behind a curved, transparent wall. *See col. 4:56-5:8*.”

Once again, the Examiner is reading more into the reference than is really there. The curved, transparent wall suggested by Schubert is beneath the chip tray, adjacent the dealer, and not around the periphery of the gaming table, as stated by the Examiner. This is the only reasonable interpretation of Schubert, which does not show any drawing figures to assist in parsing the meaning of this language, because Schubert goes on to state (in language conveniently omitted by the Examiner) "Such modified transparent walls 35 can be normal to the surface of the gaming table 10, for example, or disposed at other orientations to maximize the optics of one or more of the video cameras 27, but curved *to eliminate the possibility of other players seeing reflections in the transparent wall 35*. If Schubert were referring to the curved (arcuate) wall of the present invention, then there is simply no way for a player to see a reflection of any other player's card because the wall of the present invention faces away from the players and toward the dealer (See Figures 2 and 3).

"Arcuate is
"curved"
Don't say
"curved"

Next, the Examiner candidly admits that "Schubert does not describe the following features:

- a. Wall defining apertures therethrough wherein the video imagers are directed through the apertures.
- b. Light below the platform and directed to each of the watering locations, wherein the light provides illumination projects from the arcuate wall from below the platform laterally toward the gaming location."

For these features, the Examiner cites Walsh. Per the Examiner, Walsh discloses a lighting security system in which lights and cameras are recessed within a curved fixture for illuminating and observing activity on a gaming table. The fixture is adaptable to the shape of a gaming table to provide a function and decorative lighting assembly allowing unobtrusive observation of gaming patrons and thereby promote a more congenial, but secure gaming environment.

However, in order to render the present invention obvious, one cannot simply take the language of Walsh in a vacuum; it must be combined with the structure of Schubert,

which the Examiner has failed to do. In fact, Walsh teaches a structure suspended above a gaming table, with lights and camera directed down onto the gaming table from above. This structure cannot perform the function for which the present invention was made, and that is to track gambling on a gaming table. With light and camera above the table and directed down, the system cannot determine the chip stack or the amount wagered at the gaming position, and the system fails. Further, the Examiner has not even referred to the language of claim 1 regarding this feature, and that is "a light *below the platform* and directed to each of the wagering locations, the light providing illumination *projecting from the arcuate wall* from below the platform *laterally* toward a predetermined gaming location. As before, if one accepts the Examiner's position as to what in Schubert teaches the "arcuate wall", this same structure must be considered in determining the combination with Walsh. And this the Examiner has not even made and attempt to do.

The Examiner takes the position that "*Helms* discloses that a known difficulty of using video cameras in locations with overhead lighting is the light create undesirable shadows that result in unsatisfactory image pickup. . . . A common solution to this problem is to provide an additional light source near the camera to illuminate the subject. The Applicants candidly admit that they are not the first to recognize the need to cast light on the subject in front of a camera. That's not the issue. The issue is the Examiner has taken three references, Schubert, Walsh, and Helms, to try to show what the inventors have done and that is to illuminate the gaming position with laterally directed light in order to facilitate tracking the gaming on the table. As before, the Examiner has not explained just how the structures of these three references can be combined, or how such a combination results in the claimed structure.

At the risk of being far too repetitive, the table structure of the present invention includes an arcuate wall extending between the platform and the table, the arcuate wall defining apertures therethrough, the video imagers positioned behind the arcuate wall and directed through the apertures and a light below the platform and directed to each of the wagering locations, the light providing illumination projecting from the arcuate wall from below the platform laterally toward a predetermined gaming location. Even giving the

broadest possible interpretation of the cited references, there is no suggestion in the references to make the combination made by the Examiner. Even if one could make such a combination, it would not result in the claimed structure of the gaming table.

Chip Recognition System

In the Office Action of December 17, 2003, on page 5, the Examiner stated

“regarding the features directed to chip recognition, *Schubert* discloses all the features of the claim determining the value of wagers in each of the wagering locations using a recognition system including an algorithm which takes into account the multiple image component planes selected from the group consisting of (i) red, green, and blue (RGB), (ii) hue, saturation and lightness (i.e. HSL), (iii) particle analysis correlation; or (iv) a combination of (i), (ii) or (iii). Regardless, this feature would have been obvious to an artisan in view of the prior art discussed below. The examiner notes that the claim language only requires one method of image recognition listed in the group.”

Here, the Examiner has made a minor error with major consequences, and that is the language of the claim actually recites:

e. a chip recognition system in the central computer to determine the value of the wagers in each of the wagering locations, the recognition system including an algorithm which takes into account multiple image component planes selected from the group consisting of:

- i hue, saturation, and lightness,
- ii particle analysis correlation; and
- iii a combination i and/or ii;

Thus, nothing in any of the references, particularly *Fishbine*, shows or suggests this feature. *Fishbine* teaches

"Camera 16 continuously images a stack of gambling chips through its objective lens and generates frames of video signals representative thereof. The digitizer 18 produces two dimensional arrays of digital pixel values representative of the intensity of the pixel values of the video images captured by camera 16 at corresponding discrete pixel locations.

but what if also HSI?

Fishbine goes on at Column 4 to discuss capturing an RGB image, but the red and green and blue *values* are not used in the chip recognition system of Fishbine; only the two dimensional position of these values on a grid is used. This is shown in Figure 2 of Fishbine, and discussed at length from Column 3 to Column 5 of Fishbine. Thus, this reference cannot render the chip recognition feature of the present invention obvious, with or without the additional structural features of the claims.

For all of these reasons, claim 1, and all the claims that depend therefrom, should be in condition for allowance and the Applicants respectfully request that the final rejection of the Examiner be reversed.

Claim 4

Claim 4 recites that the light is positioned within a recess beneath the platform. The Examiner has made no attempt to find this feature. He simply states that "*Walsh* additionally teaches mounting light within recesses of a mounting structure." The Examiner has totally ignored material features of the claim, that of "a recess beneath the platform", and thus the claim should be allowable.

Claim 5

The Applicants admit that Schubert teaches a trigger of sorts to initiate operation.

Claim 8

Claim 8, a data recites an input means for inputting alpha-numeric data manually into the central computer. The Examiner has made no attempt to find an alphanumeric input device for *any* computer implemented gambling tracking system. The Applicants

candidly admit that they did not invent data input pads. But, no such data entry means are shown in the art for systems such as the present invention. Thus, claim 8 should be allowable.

Claim 9

Claim 9 recites means for determining which of the wagering locations is active. In response, the Examiner has recited a “change of state signal” from Schubert. Nothing in this reference shows or suggests this feature of the invention, and thus claim 9 should be allowable.

Claim 17

Claim 17 recites the light is underneath the platform. The Examiner did not address this claim, but previously cited Helms for features regarding the light. As previously discussed, Helms teaches hanging a light fixture above the table, and thus cannot show or suggest this feature. Thus, claim 17 should be allowable.

Claims 18 and 19

Claims 18 and 19 should be considered together, because claim 18 is provided for the sole purpose of providing proper antecedent basis for the features recited in claim 19. Read together, these claims add the feature of the table defining a substantially flat side and an arcuate side, and wherein the table further defines a dealer location along the substantially flat side and a plurality of gamer locations along the arcuate side (this much is conventional structure of a gaming table); wherein each of the plurality of video imagers is directed from a point adjacent one of the plurality of gamer locations generally in the direction of the dealer location.

The Examiner stated that “*Schubert* additionally teaches having each of the video imagers directed from a point adjacent to the gamer locations generally in the direction of the dealer location.” This issue has been somewhat addressed before, wherein *Schubert* provides an alternative embodiment of putting cameras within a raised rail or ridge that

may be disposed around the perimeter. However, this does not suggest the feature recited in claims 18 and 19, and thus these claims should be allowable.

Claim 20

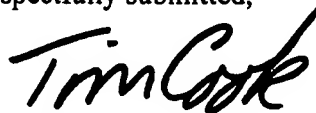
Claim 20 adds the feature wherein the predetermined wagering location is adapted to support a stack of wagering chips, including a bottom chip, and wherein the light illuminates the stack of wagering chips, including the bottom chip. Nothing in any reference recited by the Examiner even mentions the problem, much less suggesting a solution, to illuminating the bottom chip of a stack. Further, the problem is exacerbated by Helms, which illuminates the table from above. Thus, this claim should be allowable.

Claims 6 and 7

The Applicants candidly admit that they are not the first to invent a system for tracking the gambling of customers of a casino. Thus, Claim 6 and 7 should be allowable for the same reasons discussed above.

The Applicants assert that all claims are in condition for allowance and request that the rejection of the Examiner be reversed.

Respectfully submitted,

A handwritten signature in black ink that reads "Tim Cook". The signature is written in a cursive, slightly slanted style. Below the signature is a horizontal line.

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CLAIMS ON APPEAL

1 1. (Amended five times) A computer implemented gambling tracking system
2 comprising:

- 3 a. a central computer;
- 4 b. a video multiplexer coupled to the central computer;
- 5 c. a gaming table associated with the video multiplexer;
- 6 d. a plurality of video imagers on the gaming table, the video imagers
7 coupled to the video multiplexer, and each of the plurality of video
8 imagers directed to a predetermined wagering location on the table;
- 9 e. a chip recognition system in the central computer to determine the value of
10 the wagers in each of the wagering locations, the recognition system
11 including an algorithm which takes into account multiple image
12 component planes selected from the group consisting of:
- 13 i hue, saturation, and lightness,
- 14 ii particle analysis correlation; and
- 15 iii a combination i and/or ii;
- 16 f. a platform on the table above and adjacent to the predetermined wagering
17 locations wherein each of the plurality of video imagers is located below
18 the platform;
- 19 g. an arcuate wall extending between the platform and the table, the arcuate
20 wall defining apertures therethrough, the video imagers positioned behind
21 the arcuate wall and directed through the apertures; and

22 h. a light below the platform and directed to each of the wagering locations,
23 the light providing illumination projecting from the arcuate wall from
24 below the platform laterally toward a predetermined gaming location.

2-3. (Canceled)

4. (Amended) The tracking system of claim 1, wherein the light is positioned within a recess beneath the platform.

5. (Original) The tracking system of claim 1, further comprising a trigger coupled to the multiplexer to initiate operation of the system.

6. (Original) The tracking system of claim 1, further comprising a data input means to uniquely identify a gambler to the tracking system.

7. (Original) The tracking system of claim 6, wherein the data input means comprises a magnetic card stripe reader.

8. (Original) The tracking system of claim 1, further comprising data input means for inputting alpha-numeric data manually into the central computer.

9. (Original) The tracking system of claim 1, further comprising means for determining which of the wagering locations is active.

10-16. (Canceled)

17. (Added by Amendment) The system of claim 1, wherein the light is underneath the platform.

1 18. (Added by Amendment) The system of claim 1, wherein the table defines a
2 substantially flat side and an arcuate side, and wherein the table further defines a dealer
3 location along the substantially flat side and a plurality of gamer locations along the
4 arcuate side.

1 19. (Added by Amendment) The system of claim 18, wherein each of the
2 plurality of video imagers is directed from a point adjacent one of the plurality of gamer
3 locations generally in the direction of the dealer location.

1 20. (Added by Amendment) The system of claim 1, wherein the predetermined
2 wagering location is adapted to support a stack of wagering chips, including a bottom
3 chip, and wherein the light illuminates the stack of wagering chips, including the bottom
4 chip.

MATTERS HANDLED CONCURRENTLY WITH APPEAL

The Office does not acknowledge receipt of a notice of appeal by separate letter. However, if a self-addressed postcard is included with the notice of appeal, it will be date stamped and mailed.

Form paragraphs 12.01-12.04 may be used to indicate defects in a notice of appeal.

¶ 12.01 Notice of Appeal Unacceptable - Fee Unpaid

The notice of appeal filed on [1] is not acceptable because the appeal fee required under 37 CFR 1.17(b) was not filed, or was not timely filed.

Applicant may obtain an extension of time under 37 CFR 1.136(a) to file the appropriate appeal fee. The date on which the notice of appeal, the appeal fee, the petition under 37 CFR 1.136(a), and the petition fee are filed will be the date of the reply and also the date for determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply later than the maximum SIX MONTH statutory period or obtain an extension pursuant to 37 CFR 1.136(a) for more than FIVE MONTHS beyond the date of reply set in an Office action.

¶ 12.02 Notice of Appeal Unacceptable - No 2nd Rejection

The notice of appeal filed on [1] is not acceptable under 37 CFR 1.191(a) because [2].

Examiner Note

In bracket 2, insert the following wording, as appropriate:

--there has been no second or final rejection in this patent application--;

--there has been no second or final rejection in this *ex parte* reexamination proceeding on a patent that issued from an original application filed in the United States before November 29, 1999--; or

--there has been no final rejection (37 CFR 1.113) of the claims in this *ex parte* reexamination proceeding on a patent that issued from an original application filed in the United States on or after November 29, 1999--.

¶ 12.03 Notice of Appeal Unacceptable - Not Timely Filed

The notice of appeal filed on [1] is not acceptable because it was filed after the expiration of the period set in the prior Office action. This application will become abandoned unless applicant obtains an extension under 37 CFR 1.136(a). The date on which the notice of appeal, the appeal fee, the petition under 37 CFR 1.136(a), and the petition fee under 37 CFR 1.17(a) are filed will be the date of the reply and also the date for determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply later than the maximum SIX MONTH statutory period or obtain an extension pursuant to 37 CFR 1.136(a) for more than FIVE MONTHS beyond the date of reply set in an Office action.

¶ 12.04 Notice of Appeal Unacceptable - Claims Allowed

The notice of appeal filed on [1] is not acceptable because a notice of allowability was mailed by the Office on [2].

1206 Appeal Brief

37 CFR 1.192. Appellant's brief.

(a) Appellant must, within ~~two~~ months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. The brief must be accompanied by the fee set forth in § 1.17(c) and must set

forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

(b) On failure to file the brief, accompanied by the requisite fee, within the time allowed, the appeal shall stand dismissed.

(c) The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by an applicant who is not represented by a registered practitioner:

(1) *Real party in interest.* A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest.

(2) *Related appeals and interferences.* A statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of claims.* A statement of the status of all the claims, pending or cancelled, and identifying the claims appealed.

(4) *Status of amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(5) *Summary of invention.* A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing if any, by reference characters.

(6) *Issues.* A concise statement of the issues presented for review.

(7) *Grouping of claims.* For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

(8) *Argument.* The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

(i) For each rejection under 35 U.S.C. 112, first paragraph, the argument shall specify the errors in the rejection and how the first paragraph of 35 U.S.C. 112 is complied with, including, as appropriate, how the specification and drawings, if any,

(A) Describe the subject matter defined by each of the rejected claims,

(B) Enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and

(C) Set forth the best mode contemplated by the inventor of carrying out his or her invention.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, the argument shall specify the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(iii) For each rejection under 35 U.S.C. 102, the argument shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

(iv) For each rejection under 35 U.S.C. 103, the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied on in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument shall explain why the references, taken as a whole, do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not properly be combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

(9) *Appendix.* An appendix containing a copy of the claims involved in the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

Where the brief is not filed, but within the period allowed for filing the brief an amendment is presented which places the application in condition for allowance, the

amendment may be entered since the application retains its pending status during said period. Amendments should not be included in the appeal brief. Amendments should be filed as separate papers. See MPEP § 1207, § 1215.01, and § 1215.02.

TIME FOR FILING APPEAL BRIEF

37 CFR 1.192(a) provides 2 months from the date of the notice of appeal for the appellant to file an appeal brief. In an *ex parte* reexamination proceeding, the time period can be extended only under the provisions of 37 CFR 1.550(c). See also MPEP § 2274.

The usual period of time in which appellant must file his or her brief is 2 months from the date of appeal. The Office date of receipt of the notice of appeal (and not the date indicated on any Certificate of Mailing under 37 CFR 1.8) is the date from which this 2 month time period is measured. See MPEP § 512. However, 37 CFR 1.192(a) alternatively permits the brief to be filed “within the time allowed for reply to the action from which the appeal was taken, if such time is later.” These time periods may be extended under 37 CFR 1.136(a), and if 37 CFR 1.136(a) is not available, under 37 CFR 1.136(b) for extraordinary circumstances.

In the event that the appellant finds that he or she is unable to file a brief within the time period allotted by the rules, he or she may file a petition, with fee, to the Technology Center (TC), requesting additional time under 37 CFR 1.136(a). Additional time in excess of 5 months will not be granted unless extraordinary circumstances are involved under 37 CFR 1.136(b). The time extended is added to the calendar day of the original period, as opposed to being added to the day it would have been due when said last day is a Saturday, Sunday, or Federal holiday.

If after an appeal has been filed, but prior to the date for submitting a brief, an interference is declared, appellant’s brief need not be filed while the interference is pending, unless the administrative patent judge has consented to prosecution of the application concurrently with the interference. See MPEP § 2315. Absent such concurrent prosecution, the examiner may, after the interference has terminated and the files have been returned to him or her, (A) set a 2-month period for filing the brief, or (B) withdraw the final rejection of the appealed claims in order to enter an additional rejection on a ground arising out of the interference. See, for example, MPEP § 2363.03. Also, if the appellant was the losing party in the interference, claims which were designated as corresponding to the lost count or counts will stand finally disposed of under 37 CFR 1.663.

When an application is revived after abandonment for failure on the part of the appellant to take appropriate action after final rejection, and the petition to revive was accompanied by a notice of appeal, appellant has 2 months, from the mailing date of the Commissioner’s affirmative decision on the petition, in which to file the appeal brief. The time period for filing the appeal brief may be extended under 37 CFR 1.136.

With the exception of a declaration of an interference or suggestion of claims for an interference and timely copying of claims for an interference, the appeal ordinarily will be dismissed if the brief is not filed within the period provided by 37 CFR 1.192(a) or within such additional time as may be properly extended.

A brief must be filed to preserve appellant’s right to the appealed claims, notwithstanding circumstances such as:

- (A) the possibility or imminence of an interference involving the subject application, but not resulting in withdrawal of the final rejection prior to the brief’s due date;
- (B) the filing of a petition to invoke the supervisory authority of the Commissioner under 37 CFR 1.181;

(C) the filing of an amendment, even if it is one which the examiner previously has indicated may place one or more claims in condition for allowance, unless the examiner, in acting on the amendment, disposes of all issues on appeal;

(D) the receipt of a letter from the examiner stating that prosecution is suspended, without the examiner withdrawing the final rejection from which appeal has been taken or suggesting claims for an interference, and without an administrative patent judge declaring an interference with the subject application.

Although failure to file the brief within the permissible time will result in dismissal of the appeal, if any claims stand allowed, the application does not become abandoned by the dismissal, but is returned to the examiner for action on the allowed claims. See MPEP § 1215.04. If there are no allowed claims, the application is abandoned as of the date the brief was due. Claims which have been objected to as dependent from a rejected claim do not stand allowed. In a reexamination proceeding failure to file the brief will result in the issuance of the certificate under 37 CFR 1.570.

If the time for filing a brief has passed and the application has consequently become abandoned, the applicant may petition to revive the application, as in other cases of abandonment, and to reinstate the appeal; if the appeal is dismissed, but the application is not abandoned, the petition would be to reinstate the claims and the appeal, but a showing equivalent to that in a petition to revive under 37 CFR 1.137 is required. In either event, a proper brief must be filed before the petition will be considered on its merits.

Where the dismissal of the appeal is believed to be in error, filing a petition, pointing out the error, may be sufficient.

A fee under 37 CFR 1.17(c) is required when the brief is filed. 37 CFR 1.192(a) requires the submission of three copies of the appeal brief.

APPEAL BRIEF CONTENT

The brief, as well as every other paper relating to an appeal, should indicate the number of the Technology Center (TC) to which the application or patent under reexamination is assigned and the application or reexamination control number. When the brief is received, it is forwarded to the TC where it is entered in the file, and referred to the examiner.

An appellant's brief must be responsive to every ground of rejection stated by the examiner.

Where an appeal brief fails to address any ground of rejection, appellant shall be notified by the examiner that he or she must correct the defect by filing a brief (in triplicate) in compliance with 37 CFR 1.192(c). See 37 CFR 1.192(d). Form paragraphs 12.76-12.76.06 and 12.78, or form PTOL-462, "Notification of Non-Compliance with 37 CFR 1.192(c)," may be used to notify the appellant of the deficiency. Oral argument at a hearing will not remedy such deficiency of a brief. The fact that appellant may consider a ground to be clearly improper does not justify a failure to point out to the Board the reasons for that belief.

The mere filing of paper entitled as a brief will not necessarily be considered to be in compliance with 37 CFR 1.192(c). The rule requires that the brief must set forth the authorities and arguments relied upon. Since it is essential that the Board should be provided with a brief fully stating the position of the appellant with respect to each issue involved in the appeal so that no search of the record is required in order to determine that position, 37 CFR 1.192(c) requires that the brief contain specific items, as discussed below.

An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se*, i.e., there is no attorney or agent of record, and the

brief was neither prepared nor signed by a registered attorney or agent. The brief of a *pro se* appellant which does not contain all of the items, (1) to (9), specified in 37 CFR 1.192(c) will be accepted as long as it substantially complies with the requirements of items (1), (2), and (8). If the brief of a *pro se* appellant is accepted, it will be presumed that all the claims of a rejected group of claims stand or fall together unless an argument is included in the brief that presents reasons as to why the appellant considers one or more of the claims in the rejected group to be separately patentable from the other claims in the group.

A distinction must be made between the lack of any argument and the presentation of arguments which carry no conviction. In the former case, notification of a defective appeal brief is in order, while in the latter case, the application or reexamination is forwarded to the Board for a decision on the merits. As noted above, the examiner may use form paragraphs 12.76-12.76.06 and 12.78, or form PTOL-462, "Notification of Non-Compliance with 37 CFR 1.192(c)," to notify appellant that the appeal brief is defective.

If in his or her brief, appellant relies on some reference, he or she is expected to provide the Board with three copies of it.

The specific items required by 37 CFR 1.192(c) are:

(1) *Real party in interest*. A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest. If appellant does not name a real party in interest, the examiner will assume that the party named in the caption of the brief is the real party in interest, i.e., the owner at the time the brief is being filed.

The identification of the real party in interest will allow members of the Board to comply with ethics regulations associated with working in matters in which the member has a financial interest to avoid any potential conflict of interest. While the examiner will assume that the real party in interest is the individual or individuals identified in the caption when the real party in interest is not explicitly set out in the brief, nevertheless, the Board may require the appellant to explicitly name the real party in interest. See MPEP § 1210.01.

(2) *Related appeals and interferences*. A statement identifying by application number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. The appeal or interference number should also be listed. The statement is not limited to copending applications. If appellant does not identify any other appeals or interferences, the examiner will presume that there are none. While the examiner will assume that there are no related cases when no related case is explicitly set out in the brief, nevertheless, the Board may require the appellant to explicitly identify any related case. See MPEP § 1210.01.

(3) *Status of Claims*. A statement of the status of all the claims in the application, or patent under reexamination, i.e., for each claim in the case, appellant must state whether it is cancelled, allowed, rejected, etc. Each claim on appeal must be identified.

(4) *Status of Amendments*. A statement of the status of any amendment filed subsequent to final rejection, i.e., whether or not the amendment has been acted upon by the examiner, and if so, whether it was entered, denied entry, or entered in part. This statement should be of the status of the amendment as understood by the appellant.

Items (3) and (4) are included in 37 CFR 1.192(c) to avoid confusion as to which claims are on appeal, and the precise wording of those claims, particularly where the appellant has sought to amend claims after final rejection. The inclusion of items (3) and (4) in the brief will advise the examiner of what the appellant considers the status of the claims and post-final rejection amendments to be, allowing any disagreement on these questions to be resolved before the appeal is taken up for decision by the Board.

(5) *Summary of Invention.* A concise explanation of the invention defined in the claims involved in the appeal. This explanation is required to refer to the specification by page and line number, and, if there is a drawing, to the drawing by reference characters. Where applicable, it is preferable to read the appealed claims on the specification and any drawing. While reference to page and line number of the specification may require somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application.

(6) *Issues.* A concise statement of the issues presented for review. Each stated issue should correspond to a separate ground of rejection which appellant wishes the Board of Patent Appeals and Interferences to review. While the statement of the issues must be concise, it should not be so concise as to omit the basis of each issue. For example, the statement of an issue as "Whether claims 1 and 2 are unpatentable" would not comply with 37 CFR 1.192(c)(6). Rather, the basis of the alleged unpatentability would have to be stated, e.g., "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones," or "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 112, first paragraph, as being based on a nonenabling disclosure." The statement would be limited to the issues presented, and should not include any argument concerning the merits of those issues.

(7) *Grouping of Claims.* For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone, unless a statement is included that the claims of the group do not stand or fall together and, in the argument section of the brief (37 CFR 1.192(c)(8)), appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable. If an appealed ground of rejection applies to more than one claim and appellant considers the rejected claims to be separately patentable, 37 CFR 1.192(c)(7) requires appellant to state that the claims do not stand or fall together, and to present in the appropriate part or parts of the argument under 37 CFR 1.192(c)(8) the reasons why they are considered separately patentable.

The absence of such a statement and argument is a concession by the applicant that, if the ground of rejection were sustained as to any one of the rejected claims, it will be equally applicable to all of them. 37 CFR 1.192(c)(7) is consistent with the practice of the Court of Appeals for the Federal Circuit indicated in such cases as *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991); *In re Nielson*, 816 F.2d 1567, 2 USPQ2d 1525 (Fed. Cir. 1987); *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986); and *In re Sernaker*, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983). 37 CFR 1.192(c)(7) requires the inclusion of reasons in order to avoid unsupported assertions of separate patentability. The reasons may be included in the appropriate portion of the "Argument" section of the brief. For example, if claims 1 to 4 are rejected under 35 U.S.C. 102 and appellant considers claim 4 to be separately patentable from claims 1 to 3, he or she should so state in the "Grouping of claims" section of the brief, and then give the reasons for separate patentability in the 35 U.S.C. 102 portion of the "Argument" section (i.e., under 37 CFR 1.192(c) (8) (iii)).

In the absence of a separate statement that the claims do not stand or fall together, the Board panel assigned to the case will normally select the broadest claim in a group and will consider only that claim, even though the group may contain two broad claims, such as "ABCDE" and "ABCDEF." The same would be true in a case where there are both broad method and apparatus claims on appeal in the same group. The rationale behind the rule, as amended, is to make the appeal process as efficient as possible. Thus, while the Board will consider each separately argued claim, the work of the Board can be done

a → 1

b → 6

in a more efficient manner by selecting a single claim from a group of claims when the appellant does not meet the requirements of 37 CFR 1.192(c)(7).

It should be noted that 37 CFR 1.192(c)(7) requires the appellant to perform two affirmative acts in his or her brief in order to have the separate patentability of a plurality of claims subject to the same rejection considered. The appellant must (A) state that the claims do not stand or fall together and (B) present arguments why the claims subject to the same rejection are separately patentable. Where the appellant does neither, the claims will be treated as standing or falling together. Where, however, the appellant (A) omits the statement required by 37 CFR 1.192(c)(7) yet presents arguments in the argument section of the brief, or (B) includes the statement required by 37 CFR 1.192(c)(7) to the effect that one or more claims do not stand or fall together (i.e., that they are separately patentable) yet does not offer argument in support thereof in the "Argument" section of the brief, the appellant should be notified of the noncompliance as per 37 CFR 1.192(d). *Ex parte Schier*, 21 USPQ2d 1016 (Bd. Pat. App. & Int. 1991); *Ex parte Ohsumi*, 21 USPQ2d 1020 (Bd. Pat. App. & Int. 1991).

(8) *Argument*. The appellant's contentions with respect to each of the issues presented for review in 37 CFR 1.192(c) (6), and the basis for those contentions, including citations of authorities, statutes, and parts of the record relied on, should be presented in this section.

Included in this paragraph are five subparagraphs, (i) to (v). Subparagraphs (i) to (iv) concern the grounds of rejection most commonly involved in *ex parte* appeals, namely, 35 U.S.C. 112, first and second paragraphs, 35 U.S.C. 102, and 35 U.S.C. 103. Subparagraph (v) is a general provision concerning grounds of rejection not covered by subparagraphs (i) to (iv).

The purpose of subparagraphs (i) to (iv) is to ensure that the appellant's argument concerning each appealed ground of rejection will include a discussion of the questions relevant to that ground. Compliance with the requirements of the particular subparagraphs which are pertinent to the grounds of rejection involved in an appeal will be beneficial both to the U. S. Patent and Trademark Office and appellants. It will not only facilitate a decision by the Board of Patent Appeals and Interferences by enabling the Board to determine more quickly and precisely the appellant's position on the relevant issues, but also will help appellants to focus their arguments on those issues. For each rejection not falling under subparagraphs (i) to (iv), subparagraph (v) provides that the argument should specify the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error. This language recognizes that for some grounds of rejection, it may not be necessary to specify particular claim limitations, for example, a rejection under 35 U.S.C. 101, on the ground that the claims are directed to nonstatutory subject matter, as in *Ex parte Hibberd*, 227 USPQ 443 (Bd. Pat. App. & Inter. 1985).

37 CFR 1.192(a) contains the following sentence:

Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

This sentence emphasizes that all arguments and authorities which an appellant wishes the Board to consider should be included in the brief. It should be noted that arguments not presented in the brief and made for the first time at the oral hearing are not normally entitled to consideration. *In re Chiddix*, 209 USPQ 78 (Comm'r Pat. 1980); *Rosenblum v. Hiroshima*, 220 USPQ 383 (Comm'r Pat. 1983).

37 CFR 1.192(a) is not intended to preclude the filing of a supplemental paper if new authority should become available or relevant after the brief was filed. An example of such circumstances would be where a pertinent decision of a court or other tribunal was

not published until after the brief was filed.

(9) *Appendix*. An appendix containing a copy of the claims involved in the appeal.

The copy of the claims required in the brief Appendix by 37 CFR 1.192(c)(9) should be a clean copy and should not include any markings such as brackets or underlining. See MPEP § 1454 for the presentation of the copy of the claims in a reissue application.

The copy of the claims should be double spaced and the appendix should start on a new page.

37 CFR 1.192(c) merely specifies the minimum requirements for a brief, and does not prohibit the inclusion of any other material which an appellant may consider necessary or desirable, for example, a list of references, table of contents, table of cases, etc. A brief is in compliance with 37 CFR 1.192(c) as long as it includes items (1) to (9) in the order set forth (with the appendix, item (9), at the end).

REVIEW OF BRIEF BY EXAMINER

The question of whether a brief complies with the rule is a matter within the jurisdiction of the examiner. 37 CFR 1.192(d) provides that if a brief is filed which does not comply with all the requirements of paragraph (c), the appellant will be notified of the reasons for noncompliance. Appellant will be given the longest of any of the following time periods to correct the defect(s):

(A) 1 month or 30 days from the mailing of the notification of non-compliance, whichever is longer;

(B) within the time period for reply to the action from which appeal has been taken; or

(C) within 2 months from the date of the notice of appeal under 37 CFR 1.191.

Extensions of time may be granted under 37 CFR 1.136(a) or 1.136(b). The examiner may use the form paragraphs set forth below or form PTOL-462, "Notification of Non-Compliance with 37 CFR 1.192(c)," to notify appellant that the appeal brief is defective. The appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance of which the appellant was notified.

Under 37 CFR 1.192(d), the appellant may file an amended brief to correct any deficiencies in the original brief. Moreover, if appellant disagrees with the examiner's holding of noncompliance, a petition under 37 CFR 1.181 may be filed.

Once the brief has been filed, a petition to suspend proceedings may be considered on its merits, but will be granted only in exceptional cases, such as where the writing of the examiner's answer would be fruitless or the proceedings would work an unusual hardship on the appellant.

For a reply brief, see MPEP § 1208.03.

Form paragraphs 12.08-12.13, 12.16, 12.17, and 12.69-12.78, or Form PTOL-462, "Notification of Non-Compliance with 37 CFR 1.192(c)," may be used concerning the appeal brief.

¶ 12.08 Appeal Dismissed - Brief Fee Unpaid, No Allowed Claims

The appeal under 37 CFR 1.191 is dismissed because the fee for filing the brief, as required under 37 CFR 1.17(c) was not submitted or timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.

As a result of this dismissal, the application is ABANDONED since there are no allowed claims.

Examiner Note

Claims which have been indicated as containing allowable subject matter, but are objected to as being dependent upon a rejected claim, are to be considered as if they were rejected. See MPEP § 1215.04.

¶ 12.09 Appeal Dismissed - Brief Fee Unpaid, Allowed Claims

The appeal under 37 CFR 1.191 is dismissed because the fee for filing the appeal brief, as required under 37 CFR 1.17(c), was not submitted or timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.

As a result of this dismissal, the application will be further processed by the examiner since it contains allowed claims. Prosecution on the merits remains CLOSED.

Examiner Note

Claims which have been indicated as containing allowable subject matter, but are objected to as being dependent upon a rejected claim, are to be considered as if they were rejected. See MPEP § 1215.04.

¶ 12.09.01 Appeal Dismissed - Allowed Claims, Formal Matters Remaining

In view of applicant's failure to file a brief within the time prescribed by 37 CFR 1.192(a), the appeal stands dismissed and the proceedings as to the rejected claims are considered terminated. See 37 CFR 1.197(c).

This application will be passed to issue on allowed claim [1] provided the following formal matters are corrected. Prosecution is otherwise closed.

[2]

Applicant is required to make the necessary corrections within a shortened statutory period set to expire ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this letter. Extensions of time may be granted under 37 CFR 1.136.

Examiner Note

1.

This form paragraph should only be used if the formal matters cannot be handled by examiner's amendment. See MPEP § 1215.04.

2.

In bracket 2, insert a description of the formal matters to be corrected.

3.

Claims which have been indicated as containing allowable subject matter but are objected to as being dependent upon a rejected claim are to be considered as if they were rejected. See MPEP § 1215.04.

¶ 12.10 Extension To File Brief - Granted

The request for an extension of time under 37 CFR 1.136(b) for filing the appeal brief under 37 CFR 1.192 filed on [1] has been **approved** for [2].

Examiner Note

This form paragraph should only be used when 37 CFR 1.136(a) is not available or has been exhausted, such as in litigation reissues.

¶ 12.11 Extension To File Brief - Denied

The request for an extension of time under 37 CFR 1.136(b) for filing the appeal brief under 37 CFR 1.192 filed on [1] has been **disapproved** because no sufficient cause for the extension has been shown.

Examiner Note

This form paragraph should only be used when 37 CFR 1.136(a) is not available or has been exhausted, such as in litigation reissues.

¶ 12.12 *Brief Defective - Unsigned*

The appeal brief filed on [1] is defective because it is unsigned. 37 CFR 1.33. A ratification properly signed is required.

To avoid dismissal of the appeal, appellant must ratify the appeal brief within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing of this communication, whichever is longer; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

¶ 12.13 *Brief Defective - Three Copies Lacking*

The appeal brief filed on [1] is defective because the three copies of the Brief required under 37 CFR 1.192(a) have not been submitted.

To avoid dismissal of the appeal, appellant must submit the necessary additional copies of the appeal brief within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or, (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

¶ 12.16 *Brief Unacceptable - Fee Unpaid*

The appeal brief filed on [1] is unacceptable because the fee required under 37 CFR 1.17(c) was not timely filed.

This application will become abandoned unless appellant obtains an extension of time under 37 CFR 1.136(a) and files the required appeal brief fee. The date on which the brief, the fee for filing the brief, the petition under 37 CFR 1.136(a), and the petition fee under 37 CFR 1.17(a) are filed will be the date of the reply and also the date for determining the period of extension and the corresponding amount of the fee. In no case may an appellant obtain an extension for more than FIVE MONTHS under 37 CFR 1.136(a) beyond the TWO MONTH period for filing the appeal brief.

¶ 12.17 *Brief Unacceptable - Not Timely Filed*

The appeal brief filed on [1] is unacceptable because it was filed after the expiration of the required period for reply.

This application will become abandoned unless appellant obtains an extension of time under 37 CFR 1.136(a). The date on which the appeal brief, the fee for filing the brief, the petition under 37 CFR 1.136(a), and the petition fee under 37 CFR 1.17(a) are filed will be the date of the reply and also the date for determining the period of extension and the corresponding amount of the fee. In no case may an appellant obtain an extension for more than FIVE MONTHS under 37 CFR 1.136(a) beyond the TWO MONTH period for filing the appeal brief.

Form paragraph 12.69, followed by one or more of from paragraphs 12.69.01-12.78 may be used for noting noncompliance with 37 CFR 1.192(c).

¶ 12.69 *Heading for Notice Under 37 CFR 1.192(c)*

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR 1.192(c)

Examiner Note

- * Use form PTOL-90 and follow with one or more of form paragraphs 12.69.01 to 12.77
- * and conclude with form paragraph 12.78.

¶ 12.69.01 *Statement in Brief That Claims Do Not Stand or Fall Together - Supporting Reasons Lacking*

The brief includes a statement that claims [1] do not stand or fall together, but fails to present reasons in support thereof as required under 37 CFR 1.192(c)(7). MPEP § 1206.

Examiner Note

1.

This form paragraph should be used only when no supporting reasons are presented in the brief. If reasons are presented, even if they are not agreed with, use form paragraph 12.55.02 instead of this form paragraph. Reasons for disagreement are discussed in either the “Grounds of Rejection” or in the “Response to Argument” portion of the Examiner’s Answer.

2.

If the brief contains neither a statement that claims do not stand or fall together nor reasons in support thereof, use form paragraph 12.55.01 in the Examiner’s Answer.

¶ 12.70 *Missing Section Headings*

The brief does not contain the items of the brief required by 37 CFR 1.192(c) under the appropriate headings and/or in the order indicated. [1]

Examiner Note

In bracket 1, insert an indication of the missing headings or errors in the order of items.

¶ 12.70.01 *Defect in Statement of Real Party in Interest*

The brief does not contain a heading identifying the real party in interest as required by 37 CFR 1.192(c)(1).

¶ 12.70.02 *Defect in Statement of Related Appeals and Interferences*

The brief does not contain a heading identifying the related appeals and interferences directly affected by or having a bearing on the decision in the pending appeal as required by 37 CFR 1.192(c)(2).

¶ 12.71 *Defect in Statement of Status of Claims*

The brief does not contain a statement of the status of all the claims, pending or canceled, and identify the claims appealed as required by 37 CFR 1.192(c)(3). [1]

Examiner Note

In bracket 1, insert an indication of the missing claim status information.

¶ 12.72 *Defect in Statement of Status of Amendment Filed After Final Rejection*

The brief does not contain a statement of the status of an amendment filed subsequent to the final rejection as required by 37 CFR 1.192(c)(4). [1]

Examiner Note

In bracket 1, insert an identification of the amendment for which the status is missing.

¶ 12.73 *Defect in Explanation of the Invention*

The brief does not contain a concise explanation of the invention defined in the claims involved in the appeal, which refers to the specification by page and line number, and to the drawing, if any, by reference characters as required by 37 CFR 1.192(c)(5). [1]

Examiner Note

In bracket 1, insert an indication of the missing explanation.

¶ 12.74 *Defect in Statement of the Issues*

The brief does not contain a concise statement of the issues presented for review as required by 37 CFR 1.192(c)(6). [1]

Examiner Note

In bracket 1, insert an indication of the missing concise statement of the issues presented for review.

¶ 12.76 *Defect in the Arguments of the Appellant*

The brief does not contain arguments of the appellant with respect to each of the issues presented for review in 37 CFR 1.192(c)(6), and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on as required by 37 CFR 1.192(c)(8).

Examiner Note

Include one or more of form paragraphs 12.76.01 to 12.76.06 which apply.

¶ 12.76.01 *Separate Heading for Each Issue*

Each issue should be treated under a separate heading.

¶ 12.76.02 *Defect in 112, First Paragraph, Rejection Argument*

The brief does not contain, for each rejection under 35 U.S.C. 112 (first paragraph), an argument which specifies the errors in the rejection and how the first paragraph of 35 U.S.C. 112 is complied with, including how the specification and drawings, if any, [1].

Examiner Note

In bracket 1, insert the following wording, as appropriate:

- (a)–describe the subject matter defined by each of the rejected claims–,
- (b)–enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims–, or
- (c)–set forth the best mode contemplated by the inventor of carrying out his /her invention–.

¶ 12.76.03 *Defect in 112, Second Paragraph, Rejection Argument*

The brief does not contain, for each rejection under 35 U.S.C. 112 (second paragraph), an argument which specifies the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.

¶ 12.76.04 *Defect in 102 Rejection Argument*

The brief does not contain, for each rejection under 35 U.S.C. 102, an argument which specifies the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

Examiner Note

Specify claim(s) for which no argument of error was specified.